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## REMARKS

Claims 1-36 are pending in the present application. Claims 1 and 30 have been amended and Claim 36 has been canceled, leaving Claims 1-35 for consideration upon entry of the present Amendment. Attached hereto is a marked-up version of the changes made to the application. The attached page is captioned "**Version with Markings to Show Changes Made.**" Reconsideration and allowance of the claims is respectfully requested in view of the above amendments and following remarks.

Claims 1-36 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner points out that there is insufficient antecedent basis for "said cross-section." Applicants have amended Claims 1 and 30. Thus, Applicants respectfully request withdrawal of this rejection.

In addition, the Examiner also asserts that, in Claims 1 and 30, the definition of "a center point of said major axis" is vague and confusing. Applicants have amended Claims 1 and 30 to clarify that the major axis is defined by the ellipse of the a-semicircular geometry of the chamber. Thus, Applicants respectfully request withdrawal of this rejection.

Claims 1, 7, 11, 19-22, 24, and 27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Nichols (US 5,401,116). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, "[t]he identical invention must be shown in as complete detail as is contained in the \* \* \* claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The Examiner asserts that Nichols discloses a conduit having a first chamber as shown in Fig. 4, and inherently has a major axis, central axis, and inner height. The Examiner asserts that Fig. 4 also illustrates an a-semicircular, constant curve cross-sectional geometry and that a center point of the major axis would be disposed below the base of the chamber.

Applicants respectfully disagree with the Examiner's assertions regarding the teachings of Nichols. Claim 1 includes the following limitations: "said major axis is disposed along an inner height of said first chamber and is perpendicular to said central axis." (Emphasis supplied.) The bolded language illustrates that the major axis is

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disposed along an inner height of the first chamber. As is well known, the major axis of an ellipse is, by definition, the longer axis. In contrast, Fig. 4 of Nichols teaches that a major axis is located horizontally within the chamber and is not disposed along an inner height. Nichols discloses a chamber that has a flatter and wider shape than the geometry claimed in Claim 1. Thus, in Nichols, the major axis, which is the longer axis, is located horizontally and parallel to the base of the chamber. The major axis of Nichols is not located along an inner height of the chamber, as claimed in Claim 1. As such, Nichols does not disclose all of the limitations of Claim 1. Accordingly, Applicants respectfully request that the rejection regarding Claim 1 be withdrawn and Claim 1 allowed.

As dependent claims, Claims 7, 11, 19-22, 24, and 27 incorporate all of the limitations of Claim 1. Thus, for the reasons discussed above, Applicants respectfully request that the rejections as to Claims 7, 11, 19-22, 24, and 27 be withdrawn and the claims allowed.

Claims 2-6, 12-18, 25, 26, and 30-36 stand rejected under 35 U.S.C. §103(a), as being unpatentable over Nichols. For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re I'ine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). Establishing a prima facie case of obviousness requires that all elements of the invention be disclosed in the prior art. *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970).

First, Claims 2-6, 12-18, 25, and 26 include all of the limitations of Claim 1. Thus, for the reasons discussed above, Claims 2-6, 12-18, 25, and 26 are also allowable.

Second, Claims 2-6, 12-18, 25, and 26 are also allowable for additional reasons. In particular, Claims 2-4 include limitations as to the specific height to width ratios and Claims 5-6 include limitations regarding the height of the chamber. As noted by the Examiner, Nichols does not specify any particular height or width dimension requirement. Moreover, it is not obvious as to which particular height and width specifications would provide for better structural integrity.

In Nichols there is a teaching that arched conduits provide better structural integrity. However, there is no specific teaching as to which ratios are better and certainly no teaching that by increasing the height of the chamber, the structural integrity is improved. Moreover, as explained above, Nichols teaches having the major axis located in the horizontal direction

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and thus, it would not have been obvious to provide for the height and width requirements as claimed in Claims 2-6. The Nichols chamber is used for a completely different purpose (leaching systems) and thus, there is no need to have the added structural integrity for truck loads. The Nichols chambers do not need to have the structural integrity for truck loads, as leaching systems are not located in the roadways or beneath parking lots. While Nichols discusses in the background section that one of the desired features of the conduit is the ability to support heavy loads, the fact is that the Nichols leaching system chamber is not located in a roadway and does not teach that it can withstand loads of trucks, etc.

Unlike Nichols, the use of the present chamber is not limited to leaching chambers, e.g., for septic systems. The present chamber has a structural integrity that at least meet AASHTO pipe standards, allowing these chambers to be used under parking lots and in other high traffic areas. As claimed by Applicants, the particular design of the present chamber, e.g., the height to width ratios, provide added structural integrity. Based upon the figures and disclosure of Nichols, as well as the knowledge of the use of the leaching chambers of Nichols, one of ordinary skill in the art would not develop a chamber as is taught and claimed in the present application. This is not obvious to one having ordinary skill in the art.

The same argument can also be applied to Claims 12-18. Again, the Examiner is pointing to language in the background section and not to the specific teachings in Nichols to point out any specific types of molded plastics or flexural modulus range. As explained above, the Nichols chamber is used for a completely different purpose (leaching systems) and thus, there is no need to have the added structural integrity for truck loads. The Nichols chambers do not need to have the structural integrity for truck loads, as leaching systems are not located in the roadways. Accordingly, Claims 12-18 are not obvious over Nichols.

The same argument can also be applied to Claims 25-26. Again, the Examiner is pointing to language in the background section and not to the specific teachings in Nichols to point out any specific height to width ratios of the end plate. There is no teaching in Nichols that adjusting the height to width ratio of the end plate could increase the structural integrity of the chamber. Accordingly, Claims 25-26 are not obvious over Nichols.

The Examiner's assertions amount to an improper "obvious to try" determination. The requirement for a determination of obviousness is that "both the suggestion and the expectation of success must be founded in the prior art, not in applicant's disclosure." *In re*

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*Dow Chemical*, 837 F.2d 469, 473, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988) (emphasis added). An Examiner, then, cannot base a determination of obviousness on what the skilled person in the art might try or find obvious to try. Rather, the proper test requires determining what the prior art would have led the skilled person to do. In this case, the Examiner has asserted that one skilled in the art would have tried the various ratios, etc. through experimentation. That rejection is an improper rejection, as held by the court in *In re Dow Chemical*. Accordingly, for the additional reasons set forth above, Applicants respectfully request that the rejection regarding Claims 2-6, 12-18, 25, and 26 be withdrawn and the claims allowed.

The Examiner has also improperly rejected Claims 30-36. Claims 30-35 also include the following limitation: "disposing a center point of said major axis below a base of said first chamber." Since, as discussed in detail above in relation to Claim 1, the major axis of Nichols is not located along an inner height of the chamber, Nichols does not disclose all of the limitations of Claim 30. All of the arguments set forth above regarding Claims 1, 2-6, 12-18, 25, and 26 apply to Claims 30-35. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection and allow Claims 30-35.

Claims 8-10, 23, 28, and 29 stand rejected under 35 U.S.C. §103(a), as being unpatentable over Nichols as applied to Claims 1 and 7, and further in view of DiTullio (US 5,087,151). Claims 8-10, 23, 28, and 29 include all of the limitations of Claim 1. Thus, for at least the reasons discussed above, Claims 8-10, 23, 28, and 29 are also allowable.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and withdrawal of the rejections, and allowance of the case is requested.

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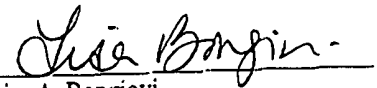
If there are any additional charges with respect to this Amendment or otherwise,  
please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorneys.

Respectfully submitted,

KRUGER ET AL.

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE****IN THE CLAIMS:**

Please amend claims 1 and 30 in "marked up" format, as follows:

1. (Marked up/Twice Amended) A fluid management system, comprising:  
a first chamber having a central axis, a major axis, and an a-semicircular, constant curve cross-sectional geometry, said major axis is disposed along an inner height of said first chamber, said major axis is defined by an ellipse of said a-semicircular geometry, said major axis ~~and~~ is perpendicular to said central axis; and  
a center point of said major axis is disposed below a base of said first chamber,  
wherein said cross-sectional geometry is a cross-section ~~is~~ taken in a direction perpendicular to said central axis.

30. (Marked up/Twice Amended) A method of fluid management, comprising:  
disposing a plurality of chambers at least about 6 inches below the surface of the ground, said chambers each having a central axis, a major axis, and an a-semicircular, constant curve cross-sectional geometry, said major axis is disposed along an inner height of said first chamber, said major axis is defined by an ellipse of said a-semicircular geometry, said major axis ~~and~~ is perpendicular to said central axis; and  
disposing a center point of said major axis below a base of said first chamber,  
wherein said cross-sectional geometry is a cross-section ~~is~~ taken in the direction perpendicular to the central axis.